IP 05-0052-CR 1 T/F USA v Canon
Judge John D. Tinder Signed on 4/6/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
CANNON, MAURICE,	)	CAUSE NO. IP05-0052-CR-01-T/F
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	IP 05-52-CR-01-T/F
	)	
MAURICE CANNON,	)	
	)	
Defendant.	)	

ENTRY ON DEFENDANT'S MOTION TO SUPPRESS STATEMENTS (Doc. No. 68)[1]

On April 5, 2005, a grand jury issued a one-count indictment alleging that the Defendant, Maurice Cannon, having previously been convicted of a crime punishable for a term exceeding one year, did knowingly possess firearms in violation of 18 U.S.C. § 922(g)(1). This cause comes before the court on the Defendant's motion to suppress statements allegedly made by the Defendant at the time of or subsequent to his arrest in this case. The Government opposes the motion. Having reviewed the parties' briefs and heard evidence and oral argument on the motion, the court now rules as follows:

[1] This Entry is a matter of public record and will be made available on the court's web site. However, the discussion contained herein is not sufficiently novel to justify commercial publication.

I. FINDINGS OF FACT[2]

The facts leading up to the arrest of the Defendant are detailed in the court's previous Entry (Doc. No. 80) on Defendant's Motion to Suppress Evidence and will be supplemented with respect to the issues related to post-arrest statements he made.

At 4:07 P.M., Officer Adams, with the assistance of other officers, apprehended the Defendant three blocks east of Audubon Street at 3926 North Bolton. (Def. Ex. C.) The officers placed the Defendant in handcuffs. Officer Carrier retrieved his squad car and arrived at North Bolton. Before Officer Carrier arrived at North Bolton, Officer Adams asked the Defendant for his name and date of birth to confirm his identity. The Defendant identified himself as Terry Hill, born on July 24, 1967. The officers ran the information through the Bureau of Motor Vehicles ("BMV") database, but could not get a confirmation on the Defendant's name. After failing to confirm the Defendant's identity, Officers Carrier and Adams placed the Defendant in the back of Officer Carrier's squad car. The officers never advised the Defendant of his *Miranda* rights; however, they only asked questions regarding his identity (name and date of birth).

At 4:41 P.M., Officer Carrier transported the Defendant to the intersection of 21st Street and Arlington Avenue to wait for the police wagon to arrive and take the Defendant. (*Id.*) During the ride to 21st and Arlington, the Defendant provided the

[2] Any portion of this discussion labeled as a finding of fact that would more appropriately be considered a conclusion of law is so deemed, and vice versa regarding the subsequent section. Similarly, any statement contained in this entry that is actually a mixed determination of fact and law is just that, regardless of how it is labeled.

officers with his true identity. In addition, he allegedly made statements to the effect that he was sorry and that he could not return to prison. The officers did not solicit such statements from the Defendant; instead, the officers asked the Defendant only for his name and asked no other questions. At this point, the officers still had not advised the Defendant of his *Miranda* rights.

Subsequently, the Government allegedly recorded statements made by the Defendant when incarcerated and awaiting trial. These statements were allegedly intercepted from the Defendant's telephone conversations from the Marion County Jail. It is not clear when these calls were recorded or whether it was before or after the federal charge was filed against him. The Defendant was originally charged only with Indiana state law and Indiana probation violations and was detained in the Marion County jail. After the disposition of those matters, the Defendant continued to be detained in the same jail under the authority of this federal charge.

II. CONCLUSIONS OF LAW

A. Defendant's Response to Identification Questions are Admissible

As a general rule, a defendant must be advised of his *Miranda* rights before he may be subjected to custodial interrogation by law enforcement; otherwise, the defendant's statements will be inadmissible. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). However, the Supreme Court has recognized a "booking exception" which exempts from *Miranda's* coverage questions to secure the "biographical data necessary to complete booking or pretrial services." *Pennsylvania v. Muniz*, 496 U.S. 582, 601-02,

n.14 (1990). However, under *Muniz*, the police may not ask questions, even during booking, that are designed to elicit incriminatory admissions. *Id.* Here, Officers Adams and Carrier never advised the Defendant of his *Miranda* rights. But they asked only for his name and date of birth in order to confirm his identity after placing him under arrest. The officers did not ask for this information in order to elicit incriminatory admissions, and there is no indication that the Defendant interpreted the questions as seeking incriminatory admissions. Therefore, the Defendant's statements in response to the officers' identification questions are admissible.

B. Defendant's Volunteered Statements are Admissible

As stated above, if a defendant is not advised of his *Miranda* rights before he is subject to custodial interrogation by law enforcement, then his statements will be inadmissible. *Miranda*, 384 U.S. at 444. In *Miranda*, the Supreme Court defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* The Supreme Court expanded on this definition in *Rhode Island v. Innis*, 446 U.S. 291 (1980): "[T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent," *id.* at 300-01, the latter which means "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police would know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301; *see also United States v. Abdulla*, 294 F.3d 830, 834 (7th Cir. 2002). However, statements that are not the result of police interrogation but that are

volunteered are not subject to *Miranda*. *Miranda*, 384 U.S. at 478; *Abdulla*, 294 F.3d at 835; *United States v. Westbrook*, 125 F.3d 996, 1002 (7th Cir. 1997).

While transferring the Defendant to 21st Street and Arlington, Officer Carrier claims that the Defendant made statements to the effect that he was sorry and that he could not go back to prison. Yet, the preponderance of the evidence shows that these statements were not made in response to express police questioning or its functional equivalent. *See United States v. Buckley*, 4 F.3d 552, 559 (7th Cir. 1993) (holding that the Government must prove by a preponderance of the evidence the voluntariness of a defendant's statement) (citing *United States v. Haddon*, 927 F.2d 942, 945 (7th Cir. 1991)). The Defendant initiated these statements on his own and made them voluntarily. Thus, admission of these statements would not violate *Miranda*.

The Defendant asks the court to extend the reach of *Miranda* to cover those statements made by a defendant in custody in the back of a police car even when those statements were not the response of police interrogation. However, the court believes that such an "extension" of *Miranda* would conflict with precedent established by the Supreme Court and Seventh Circuit cases that unambiguously require that, for *Miranda* to apply, the statements must be made in response to police interrogation, whether explicit or its functional equivalent. The court accordingly must reject the Defendant's suggested extension of *Miranda* and rule that *Miranda* does not prevent the admission of the statements at issue.

C. The Defendant's Recorded Jail Telephone Conversations are Admissible for Impeachment Purposes

The Government apparently has recorded statements from the Defendant's telephone conversations made from the Marion County Jail and plans to use such statements, if needed, as impeachment evidence at trial. The Defendant cannot challenge the admissibility of these statements under *Miranda* because, as explained above, *Miranda* only applies to statements made in response to interrogation. The Defendant's statements made to a third party over the telephone are not statements made in response to interrogation and thus cannot be held inadmissible solely under *Miranda*.

A Fourth Amendment challenge to the admissibility of these statements also will fail. To invoke the Fourth Amendment's protection, the Defendant must establish a legitimate expectation of privacy in the area searched or the subject matter seized. *United States v. Sababu*, 891 F.2d 1308, 1329 (7th Cir. 1989) (citing *Katz v. United States*, 389 U.S. 347 (1967)). Here, the Defendant cannot make a showing of a legitimate expectation of privacy, for in jails "official surveillance has traditionally been the order of the day." *Lanza v. New York*, 370 U.S. 139, 143 (1962); *see also United States v. Madoch*, 149 F.3d 596, 602 (7th Cir. 1998) (holding that the marital communications privilege did not apply with regard to recorded jail telephone conversations between a defendant and his spouse because there was no expectation of confidentiality in the jail telephone calls); *Sababu*, 891 F.2d at 1329 (finding

unreasonable for a defendant to expect that telephone calls made in prison would be private).[3]

Even if the recording of the Defendant's jail telephone conversations had constituted a Fourth Amendment violation, the Government indicates that it will restrict its use of those statements for impeachment purposes only. "Evidence obtained in violation of the Fourth Amendment and inadmissible in the prosecution's case in chief may be used to impeach a defendant's direct testimony." *United States v. Leon*, 468 U.S. 897, 910 (1984); *see also Walder v. United States*, 347 U.S. 62, 65 (1954) ("It is one thing to say that the Government cannot make affirmative use of evidence unlawfully obtained. It is quite another to say that the defendant can turn the illegal method by which evidence in the Government's possession was obtained to his own advantage, and provide himself with a shield against contradiction of his untruths."); *United States v. Brimah*, 214 F.3d 854, 857 n.3 (7th Cir. 2000). Accordingly, the Defendant's motion to suppress the recorded statements he made during a telephone conversation in jail will be denied and the Government will be permitted to use the statements for impeachment purposes.

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[3] The Defendant alleges that "[t]hese conversations were made without [his] knowledge," (Mot. Suppress ¶ 10), but the court suspects that he intended to allege that the interception and recording of the calls was done without his knowledge. Though no evidence was introduced on this subject, it has been shown in many cases before this court that for decades, the inmate telephone areas at the Marion County jail are posted with signs warning of the recording of inmate calls, and other notice is given. As such, the use of a telephone with such a warning constitutes consent to the interception and deprives the Defendant of relief under the federal wiretap prohibition. *See* 18 U.S.C. § 2511(2)(c). This issue was not developed in the Defendant's motion or at the hearing or argument, so the court will not address it further.

III. CONCLUSION

For the foregoing reasons, the Defendant's Motion to Suppress Statements (Doc. No. 68) is **DENIED**.

ALL OF WHICH IS ENTERED this 6th day of April 2006.

John Daniel Tinder, Judge
United States District Court

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